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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048100
Party	Defendant LABORATOIRES DE BIOLOGIE VEGETALE YVES R OCHER S.A.
Correspondence Address	Herbert H. Finn Greenberg Traurig, LLP Suite 2500, 77 West Wacker Drive Chicago, IL 60601 UNITED STATES benderr@gtlaw.com, finnh@gtlaw.com
Submission	Motion to Extend
Filer's Name	Richard P. Bender
Filer's e-mail	benderr@gtlaw.com, finnh@gtlaw.com
Signature	//RPB//
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4392132 CANADA INC.  
by assignment from  
TRANSAT TOURS CANADA, INC.  
  
Petitioner,  
  
v.  
  
LABORATOIRES DE BIOLOGIE  
VEGETALE YVES ROCHER S.A.  
  
Registrant.

Attention:  
United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MOTION FOR ADDITIONAL EXTENSION OF TIME  
TO ANSWER OR OTHERWISE PLEAD**

Registrant, LABORATOIRES DE BIOLOGIE VEGETALE YVES ROCHER, through its attorneys, hereby respectfully requests that the period of time in which Registrant may answer or otherwise respond with respect to Petitioner 4392132 CANADA, INC.'s Petition for Cancellation be extended until July 9, 2008.

According to the last Order entered by the Board, Registrant's Answer was due on March 19, 2008, and the discovery period was set to close on March 29, 2008. On March 19, 2008, Registrant submitted an unopposed motion for an extension of time to answer or otherwise plead for an additional thirty days. The Board has not ruled on that motion. On April 18, 2008, Registrant submitted a Stipulated Motion for a further extension of time to answer or otherwise plead and to also extend the discovery period. To date, the Board has not granted the Stipulated Motion.

The parties, each of which are foreign nationals, are actively engaged in settlement discussions. Those discussions are being handled by counsel outside the U.S. Multiple offers and counter-offers have been exchanged. The undersigned has been advised that Registrant is currently waiting for Petitioner to respond to Registrant's last proposal. There has been no indication that settlement discussions are not proceeding.

While the Board has not yet ruled on the pending Stipulated Motion, Registrant submits this motion for additional extension of time to answer or otherwise respond until July 9, 2008. In view of the Board's inaction on the pending stipulated motion to reset discovery, and the parties' continued settlement discussions, Registrant's motion is timely and should be accepted, even under the good cause standard of Fed. R. Civ. P. 55(c). *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991). In such a circumstance, the Board accepts the late motion, because (1) it is not the result of willful conduct or gross neglect on the part of Registrant, (2) the delay will not result in substantial prejudice to Petitioner, and (3) Registrant has a meritorious defense to the cancellation. *Id.*; TBMP § 312.02.

Registrant's delay, to the extent there is any, was not the result of willful conduct or gross negligence. Moreover, while under the pending Stipulated Motion Registrant's answer would have been due on May 18, 2008, the Board has not yet ruled on the new stipulated date. As indicated above, the parties, both foreign entities, have been in settlement discussions for quite some time now. Registrant has submitted five (5) previous motions to extend time to answer, all but one were stipulated motions, and none were opposed.<sup>1</sup> Registrant contacted counsel for Petitioner to consent to a further extension of time, however due to the Memorial Day holiday counsel was unavailable. Since his return, counsel has not objected to the requested extension.

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<sup>1</sup> See motions dated 10/19/2007, 11/20/2007, 1/18/2008, 3/19/2008, and 4/18/2008.

Further, Registrant has been actively engaged in their settlement discussions, and has worked to secure stipulated extensions of time to answer, as well as stipulated motion to extend discovery. Such activity is far from willful conduct or gross negligence. Rather, Registrant is diligently working towards submitting joint motions to the Board and ultimately encouraging the parties to settle their dispute.

Registrant's present Motion also will not result in substantial prejudice to Petitioner. As detailed above, the parties have been engaged in settlement discussions to allow both parties to use the mark TRANSAT in their respective businesses. Petitioner has given no indication that such continued settlement discussions are unwanted, nor has counsel for Petitioner responded indicating a lack of consent to an extension of time.<sup>2</sup> Granting the extension will result in additional time for the parties to continue (and hopefully complete) their settlement discussions, which will benefit Petitioner, and the Board, rather than result in any prejudice to it.

The final factor, Registrant having a meritorious defense, will be satisfied upon Registrant's answer, which, by agreement of the parties, it has yet to file. When, such as here, the Registrant demonstrates the first two factors, it is given time to file an answer to demonstrate that defense. *Djeredjian v. Kashi Co.*, 21 USPQ2d 1613, 1615 (TTAB 1991). Furthermore, such a showing is applicable in the more egregious context of a Notice of Default or a Default Judgment, which has not been ordered in this case.

This extension is being requested to permit the parties to further pursue settlement discussions. The extension is not being interposed solely for purposes of delay. Registrant's counsel notified Petitioner's counsel that it would seek an extension of time to answer or

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<sup>2</sup> Registrant requested an extension of time to answer or otherwise respond. An automatically generated response from the attorney's e-mail system indicated he was away but "sporadically checking emails." To date, Registrant's request for consent has not been refused.

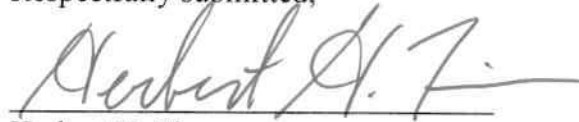
otherwise respond to the Petition for Cancellation. In view of the parties' ongoing settlement efforts, the undersigned did not expect to receive an objection and none has been received to date.

CONCLUSION

Registrant accordingly requests an extension of time until July 9, 2008 to answer or otherwise respond to the Petition for Cancellation.

Respectfully submitted,

Dated: June 9, 2008



Herbert H. Finn

One of Attorneys for Registrant

CERTIFICATE OF MAILING

I hereby certify that this MOTION FOR ADDITIONAL EXTENSION OF TIME TO ANSWER OR OTHERWISE PLEAD is being filed electronically with the United States Patent and Trademark Office through the ESTTA system on June 9, 2008.



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the MOTION FOR ADDITIONAL EXTENSION OF TIME TO ANSWER OR OTHERWISE PLEAD was served on the 9th day of June, 2008, via first class mail, postage prepaid to:

Mark Harrison  
VENABLE LLP  
575 7<sup>th</sup> Street, N.W.  
Washington, DC 20004

